



DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3555

[Docket No. RHS-21-SFH-0003]

RIN: 0575-AD22

Single Family Housing Guaranteed Loan Program

AGENCY: Rural Housing Service, Agriculture Department (USDA).

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS or Agency), proposes to amend the current regulation for the Single Family Housing Guaranteed Loan Program (SFHGLP) to update the requirements for Federally supervised lenders, minimum net worth and experience for non-supervised lenders, approved lender participation requirements, treatment of applicants with delinquent child support payments and builder credit requirements. These changes would promote an efficient and robust management and oversight structure of lenders in the SFHGLP, strengthen underwriting practices by denying loan guarantees for applicants who are subject to administrative offset to collect delinquent child support payments and streamline requirements for screening builder-contractors by lenders.

DATES: Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.

ADDRESSES: Comments may be submitted by going to the Federal eRulemaking Portal: Go to <http://www.regulations.gov> and in the “Search Documents” box, enter the Docket Number (RHS-21-SFH-0003) or the RIN# 0575-AD22, and click the “Search” button. To submit a comment, choose the “Comment Now!” button. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available under the “Help” tab at the top of the Home page.

Other Information: Additional information about Rural Development and its programs is available on the Internet at <http://www.rurdev.usda.gov/index.html>.

All comments will be available for public inspection online at the Federal eRulemaking Portal (<https://www.regulations.gov>).

FOR FURTHER INFORMATION CONTACT: Ana Placencia, Finance and Loan Analyst, Single Family Housing Guaranteed Loan Division, Rural Development, U.S. Department of Agriculture, STOP 0784, Room 2250, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250-0784, telephone: (254) 721-0770; or email: ana.placencia@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Rural Housing Service (RHS) is issuing a proposed rule to amend the Single-Family Housing Guaranteed Loan Program (SFHGLP) regulations as outlined in 7 CFR part 3555, subparts B, C and D by updating the regulations to strengthen oversight and management of the growing SFHGLP portfolio. The revisions align with the standards for managing credit programs recommended by the Office of Management and Budget (OMB) for Federally supervised lenders, minimum net worth, minimum experience for non-supervised lenders, and approved lender participation requirements. The revisions would also provide guidance for

processing applicants with delinquent child support payments and relaxes builder requirements to better align with the credit program requirements of other Federal agencies.

Discussion of the Rule

(1) Minimum Net Worth Requirements for Non-Supervised Lenders:

Currently, the Agency does not impose minimum financial or experience criteria for non-supervised lenders. Non-supervised lenders (i.e. lenders not supervised by federal entities listed in § 3555.51(a)(8)) that do not meet the minimum capital and financial requirements are considered to have a weak financial position that may pose an incremental risk to the program. The Agency proposes to amend § 3555.51 and add paragraph (b)(i) and (ii) to reflect that non-supervised lenders must have a minimum adjusted net worth of \$250,000, or at least \$50,000 in working capital plus one percent of the total volume in excess of \$25 million in guaranteed loans originated, serviced or purchased during the lender's prior fiscal year, up to a maximum required adjusted net worth of \$2.5 million and one or more lines of credit with a minimum aggregate of \$1 million. The proposed financial thresholds are based on recommendations of a third-party contractor's analysis¹ of participating lenders. The contractor's recommendation for adopting these capital and financial requirements for non-supervised lenders was derived from an analysis of the capital and net worth requirements of recognized sources or eligibility determinations outlined in § 3555.51(a). Establishing minimum financial requirements for non-supervised lenders would potentially reduce the Agency's risk of doing business with entities that have insufficient financial resources. Lenders that meet these minimum financial requirements also demonstrate trustworthiness that would contribute to the success of the SFHGLP. The contractor recommendation was determined using a combination approach of the Veterans Administration (VA) base requirement and adding the volume component, which

¹ Falcon Capital Advisors, CLIN 0003 Report, Capital and Financial Requirements for Non-Regulated Lenders available at <https://www.rd.usda.gov/page/usda-linc-training-resource-library>.

is structured and capped following the FHA standard, *see Falcon Capital Advisor, CLIN 0003 Report*. The flexibility would allow the Agency to adjust the requirements in the technical handbook without requiring revisions to the regulatory language.

This action will align lender approval requirements with those of other Federal credit programs and incorporates best practice recommendations outlined in Office of Management and Budget (OMB) Circular A-129.²

(2) Federally Supervised Lenders:

Currently, the regulation requires that all lenders approved for participation in the SFHGLP must provide additional information to demonstrate its ability to originate, underwrite and service loans. However, the Agency has determined that lenders that are Federally supervised and meet the criteria in the current § 3555.51(a)(8) have demonstrated ability and should not be required to provide additional documentation. The proposal will alleviate the process for obtaining Agency approval, reduce the required lender documentation and reflect a more streamlined process for Federally supervised lenders.

A summary of the changes includes amending 7 CFR 3555.51(a)(8) to eliminate (a)(8)(iv) because it refers to the Office of Thrift Supervision (OTS), which no longer exists. Furthermore, the current § 3555.51(a)(9) and (10) is intended to provide a path for lenders that are not regulated by state or federal agencies and do not meet the requirements of (a)(1) through (8) an opportunity to participate in the SFHGLP. Therefore, the Agency also proposes to amend the introductory texts of § 3555.51(a)(9) and (10) to clarify that when lenders cannot meet the demonstrated ability criteria outlined under § 3555.51(a)(1) through (8), those lenders must submit additional documentation to demonstrate their ability to originate loans.

² Available at: <https://fiscal.treasury.gov/files/dms/circ-a129-upd-0113.pdf>. OMB requires credit granting agencies to establish and publish in the Federal Register specific eligibility criteria for lender or servicer participation in Federal credit programs, including qualification requirements for principal officers and staff of the lender or servicer. OMB Circular A-129, p. 12.

(3) Approved Lender Participation Requirements:

Lenders must meet applicable requirements in order to begin and continue participation in the SFHGLP. Currently, the Agency generally reviews each lender every 2 years to ensure compliance. However, this process is not codified in the regulations. Therefore, the Agency proposes to amend § 3555.51 and add paragraph (c) under SFHGLP participation requirements, to clarify that lender eligibility will be reviewed every 2 years for continued participation in the SFHGLP. The proposal will also add a requirement that principal officers of lenders must have a minimum of 2 years of experience in originating or servicing guaranteed mortgage loans as recommended in OMB Circular A-129. In order to be deemed eligible for continued lender participation in the SFHGLP, the lender and its principal officers must continue to meet all the criteria as outlined in § 3555.51 which, as proposed to be amended, would include (a) specific experience in underwriting and servicing loans, (b) financial requirements for non-supervised lenders, and (c) SFHGLP participation requirements.

(4) Builder-Contractor Requirements:

At present, § 3555.105(b)(4) and (5) require that builder-contractors have acceptable credit histories free of judgments, collections, or liens related to previous projects the builder-contractor was involved with and that they not have a criminal history. Currently, the lender is responsible for obtaining the [builder-contractor's] credit history and background checks. However, the Agency has determined that these requirements are not the industry standard. The builder-contractor's ability to participate in such projects should be based on the applicant's and lender's review of the builder-contractor's experience, reputation and financial ability to complete the project in a timely, efficient and competent manner. The proposal would remove § 3555.105(b)(4) and (5). The changes would streamline screening requirements, reduce administrative burden on the lender and would also align with other Federal programs, including the Direct Section 502 loan program, which do not have such requirements for

builder-contractors. The Agency is specifically soliciting comments on the impact of eliminating the credit and criminal background checks for building contractors.

(5) Applicants Delinquent on Child Support:

Currently, the Agency does not have explicit instructions on how lenders should treat an applicant's delinquent child support payments that are subject to collection by federal administrative offset. The Agency considers delinquent child support payments subject to administrative offset a significant derogatory obligation and an indication that an applicant does not have the reasonable ability or willingness to meet their obligations. Furthermore, it would be against the federal government's interest to guarantee a loan for an applicant from whom the federal government is simultaneously pursuing collection for a delinquent debt. Therefore, RHS proposes to amend § 3555.151(i) to specify that borrowers with delinquent child support payments subject to collection by administrative offset are ineligible unless the payments are brought current, the debt is paid in full, or otherwise satisfied.

Statutory Authority

Section 510(k) of Title V the Housing Act of 1949 (42 U.S.C. 1480(k)), as amended, authorizes the Secretary of the Department of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title.

Executive Order 12866, Classification

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Except where specified, all state and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry federal requirements. No person is required to

apply for funding under SFHGLP, but if they do apply and are selected for funding, they must comply with the requirements applicable to the federal program funds. This rule is not retroactive. It will not affect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 must be exhausted.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million, or more, in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Environmental Policy Act

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, "Environmental Policies." RHS determined that this action does not constitute a major Federal action significantly affecting the quality of the environment. In accordance with the

National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact

Statement is not required.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Regulatory Flexibility Act

The rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature on this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program is not subject to the requirements of Executive Order 12372, “Intergovernmental Review of Federal Programs,” as implemented under USDA's regulations at 7 CFR part 3015.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the

relationship or the distribution of powers and responsibilities between the federal government and Indian tribes. Thus, this rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this rule, they are encouraged to contact USDA's Office of Tribal Relations or RD's Native American Coordinator at: ALAN@wdc.usda.gov to request such a consultation.

Programs Affected

The program affected by this proposed rule is listed in the Catalog of Federal Domestic Assistance under Number 10.410, Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans).

Paperwork Reduction Act

This rule contains no new reporting or recordkeeping burdens under OMB control number 0575- 0179 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Civil Rights Impact Analysis

Rural Development has reviewed this rule in accordance with USDA Regulation 4300-4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, marital or familial status. Based on the review and analysis of the rule and all available data, issuance of this Final Rule is not likely to negatively impact low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status.

E-Government Act Compliance

Rural Development is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA Programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

mail: U.S. Department of Agriculture

Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue SW.,

Washington, D.C. 20250-9410; or

(1) email: OAC@usda.gov

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List of Subjects in 7 CFR Part 3555

Construction, Eligible loan purpose, Home improvement, Loan programs – housing and community development, Loan terms, Mortgage insurance, Mortgages, and Rural areas.

For the reasons discussed in the preamble, the Agency is proposing to amend 7 CFR part 3555 as follows:

PART 3555 – GUARANTEED RURAL HOUSING PROGRAM

1. The authority citation for part 3555 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1471 *et seq.*

2. Amend § 3555.51 by:

- (a) Revising paragraph (a)(8);
- (b) Revising the introductory text of paragraphs (a)(9) and (10);
- (c) Revising paragraph (b) and (b)(1);
- (d) Adding paragraph (c).

The revisions and additions read as follows:

§ 3555.51 Lender eligibility.

* * * * *

(a)* * *

(8) A Federally supervised lender. Acceptable sources of Federal supervision include:

- (i) Being a member of the Federal Reserve System;
- (ii) The Federal Deposit Insurance Corporation (FDIC);
- (iii) The National Credit Union Administration (NCUA);

- (iv) The Office of the Comptroller of the Currency (OCC);
- (v) The Federal Housing Finance Board regulating lenders within the Home Loan Bank (FHLB) system.

(9) If lenders cannot meet the requirements under (a) (1) through (8), they may demonstrate its ability to originate and underwrite loans by submitting appropriate documentation, examples of which include, but are not limited to: * * *

(10) A lender that proposes to service loans that cannot meet (a) (1) through (8) must demonstrate its ability by submitting appropriate documentation, examples of which include but are not limited to: * * *

(b) Financial Requirements for Non-Supervised Lenders. All lenders not covered in paragraph (8) of this section, must have:

- (i) a minimum adjusted net worth of \$250,000, or \$50,000 in working capital plus one percent of the total volume in excess of \$25 million in guaranteed loans originated, serviced or purchased during the lender's prior fiscal year, up to a maximum required adjusted net worth of \$2.5 million, and
- (ii) one or more lines of credit with a minimum aggregate of one million dollars.

* * * * *

(c) *SFHGLP participation requirements* Lenders and their agents must comply with the following requirements:

(1) Keep up to date, and comply with, all Agency regulations and handbooks, including all amendments and revisions of program requirements and policies. Lenders must also comply with all other applicable federal, state, and local laws, rules, and requirements, including those under the purview of the Consumer Financial Protection Bureau, such as the Real Estate Settlement Procedures Act and the Truth in Lending Act. Lenders who originate a minimal number loans, as determined by

the Agency, in a 24 month time frame may be required to take updated training to ensure a lender's continued knowledge of the program;

(2) Regularly check Rural Development's Web site for new issuances related to the program;

(3) Underwrite loans according to Rural Development regulations and process and approve loans in accordance with program instructions;

(4) Review loan applications for accuracy and completeness;

(5) Ensure that applicant income limits are not exceeded;

(6) Ensure that borrowers have adequate loan repayment ability and acceptable credit histories;

(7) Ensure that loss claims include only supportable costs;

(8) Cooperate fully with Agency reporting and monitoring requirements;

(9) Comply with limitations on loan purposes, loan limitations, interest rates, and loan terms;

(10) Inform Rural Development immediately after the sale, transfer, or change of servicers of any Agency guaranteed loan;

(11) Maintain reasonable and prudent business practices consistent with generally accepted mortgage industry standards, such as maintaining fidelity bonding;

(12) Remain responsible for servicing even if servicing has been contracted to a third party;

(13) Use Rural Development, HUD, Fannie Mae, or Freddie Mac forms, unless otherwise approved by Rural Development;

(14) Maintain eligibility under paragraph (a) of this section;

(15) Notify Rural Development if there are any material changes in organization or practices;

(16) Be neither debarred nor suspended from participation in Federal programs, not debarred, suspended or sanctioned under state licensing and certification laws and regulations;

(17) Notify Rural Development in the event of its bankruptcy or insolvency;

(18) Remain free from default and delinquency on any debt owed to the Federal government;

(19) Allow Rural Development or its representative access to the lender's records, including, but not limited to, records necessary for on-site and desk reviews of the lender's operation and the operations of any of its agents to verify compliance with Agency regulations and guidelines;

(20) Maintain adequate operational quality control and reporting procedures to prevent fraud;

(21) Maintain complete loan files with all required documentation that is accessible by Agency upon request for review;

(22) Execute a lender's agreement provided by Rural Development;

(23) Evidence that principal officers must have a minimum of two years of experience in originating or servicing guaranteed mortgage loans; and

(24) Provide documentation as required by the Agency to be reviewed every two years for continued lender participation.

* * * * *

§3555.105 [Amended]

4. Amend § 3555.105 by removing paragraphs (b)(4) and (5) and renumbering paragraph (b)(6) as appropriate.

5. Amend § 3555.151 by adding paragraph (i)(9) to read as follows:

§ 3555.151 Eligibility Requirements.

* * * * *

(i)* * *

(9) Applicants with delinquent child support payments subject to collection by administrative offset are ineligible unless the payments are brought current, the debt is paid in full, or otherwise satisfied.

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Chadwick Parker,
Acting Administrator,
Rural Housing Service.

[FR Doc. 2021-11937 Filed: 6/8/2021 8:45 am; Publication Date: 6/9/2021]